

COMMITTEE NOTE

The form is amended to implement amendments to the Bankruptcy Code contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). The period for which the debtor must provide all names used and information about any prior bankruptcy cases is now eight years to match the required time between the granting of discharges to the same debtor in § 727(a)(8) of the Code as amended in 2005. The box indicating the debtor's selection of chapter under which to file the case been amended to delete "Sec. 304 - Case ancillary to foreign proceeding and replace it with "Chapter 15 - Petition for Recognition of a Foreign Proceeding,." reflecting the 2005 repeal of § 304 and the adding to the Code of chapter 15. A statement of venue to be used in a chapter 15 case also has been added.

The section of the form labeled "Type of Debtor" has been revised and subtitled "Form of Organization." This section is revised to make it clear that a limited liability corporation ("LLC") and limited liability partnership ("LLP") should identify itself as a "corporation." A new section titled "Nature of Business" has been created that includes both existing checkboxes that identify certain types of debtors for which the Bankruptcy Code provides special treatment, such as stockbrokers and railroads, and a new checkbox for a "health care business" for which the 2005 amendments to the Code include specific requirements. This section of the form also contains checkboxes for single asset real estate debtors and nonprofit organizations which will be used by trustees and creditors and by the Director of the Administrative Office of the United States Courts in preparing statistical reports and analyses. The statistical section of the form also is amended to provide more detail concerning the number of creditors in a case. A check box also has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee, to implement the 2005 enactment of 28 U.S.C. § 1930(f) authorizing the bankruptcy court to waive the filing fee in certain circumstances.

Although the 2005 Act eliminated an eligible debtor's option to elect to be treated as a "small business" in a chapter 11 case, new provisions for such debtors added to the Code in 2005 make it desirable to identify eligible debtors at the outset of the case. Accordingly, the section of the form labeled "Chapter 11 Small Business" has been revised and renamed "Chapter 11 Debtors" for this purpose. Chapter 11 debtors that meet the definition of "small business debtor" in § 101 of the Code are directed to identify themselves in this section of the form.

A space is provided for individuals to certify that they have received budget and credit counseling prior to filing, as required by § 109(h) which was added to the Code in 2005, or to request a waiver of the requirement. Space also is provided for a debtor who is a tenant of residential real property to state whether the debtor's landlord has a judgment for possession of the premises, whether under applicable nonbankruptcy law the debtor would be permitted to cure the monetary default, and whether the debtor has made the appropriate deposit with the court. This addition to the form implements § 362(l) which was added to the Code in 2005.

The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received about bankruptcy relief, the declaration under penalty of perjury by a bankruptcy petition preparer, and the declaration and certification by an attorney all are amended to include new material mandated by the 2005 Act. A signature section also is provided for a representative of a foreign proceeding.

COMMITTEE NOTE

The form is amended to direct the debtor to state whether the debtor has paid either an attorney or a non-attorney bankruptcy petition preparer for services in connection with the case. The court has discretion to consider whether making such payment disqualifies the debtor from paying the filing fee in installments under [interim] Rule 1006(b) [as amended]. The declaration and certification by a non-attorney bankruptcy petition preparer in the form are amended to include material mandated by § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). The certification by a non-attorney bankruptcy petition preparer is re-named a declaration and also is revised to include material mandated by § 110 of the Code as amended in 2005.

COMMITTEE NOTE

This form is new. 28 U.S.C. § 1930(f), enacted as part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), provides that “under procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments.” To implement this provision, [interim Bankruptcy Rule 1006(c) is added to] Bankruptcy Rule 1006 [is amended to add a new subdivision (c)]. Official Form 3B is the form referenced in that subdivision, and is to be used by individual chapter 7 debtors when applying for a waiver of the filing fee. A corresponding standard order also is included.

COMMITTEE NOTE

The form is amended to direct that the name and address of any minor child not be disclosed. The amendment implements § 112 of the Code, which was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005).

COMMITTEE NOTE

The form has been amended to delete statistical information no longer required and to add “as to liability or amount” to the language concerning debts that are the subject of a bona fide dispute, in conformity with § 303 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). A new check box is provided for the petitioning creditors to identify the debtor that is a “health care business” as defined in § 101 of the Code, thereby alerting the court and the United States trustee of the necessity under § 332 to appoint an ombudsman to represent the interests of the patients of the health care business. These amendments also implement the 2005 amendments to the Code. A new checkbox also is provided for a “clearing bank,” which may become a debtor upon the filing of a petition at the direction of the Board of Governors of the Federal Reserve System; this addition conforms to an amendment to § 109(b)(2) of the Code which was enacted in 2000.

COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities are amended to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). An amendment that directs the debtor to avoid disclosing the name and address of any minor child occurs in several of the schedules in conformity with § 112 which was added to the Code in 2005. Section 112 provides for the debtor to provide the name of any minor child confidentially to the court, should the trustee need the information to evaluate properly the information filed by the debtor.

The Summary of Schedules is amended to include additional information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the 2005 Act. Among the information to be reported annually to Congress under § 159 is the aggregate amount of debt discharged by debtors in each judicial district “determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.” 28 U.S.C. § 159(c)(3)(C). Instructions have been added concerning calculating and reporting totals. Debtors also are advised that reporting a debt as being in a category that is “predominantly nondischargeable” is for statistical purposes only and does not determine the status of the debt. Amendments to Schedules D, E, and F made in furtherance of § 159 are discussed separately under those schedules.

Schedules A, B, C, and D are amended to delete the word “market” from the columns in which the debtor reports the value of various kinds of property. Amendments to § 506 of the Code enacted in 2005 specify that “replacement value” must be used in connection with certain property. The schedules no longer specify “market” value and permit the debtor to choose the the appropriate one, whether that be replacement, market, or some other value. Valuation of property, generally, is the subject of extensive provisions in the Code, and the deletion of the word “market” from the determinations of value to be made by the debtor on the schedules is intended to remove any inference about choice of valuation standard. This deletion simply indicates that the form takes no position on the which Code provision or valuation standard may be applicable in any instance.

The following paragraphs describe changes that are specific to each schedule.

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA, as § 541(b)(5), added to the Code in 2005, makes special provision for them. The schedule also is amended to require the debtor to disclose the existence of any customer lists or

other compilations containing personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes. This amendment implements § 332, which was added to the Code in 2005.

Schedule C - Property Claimed as Exempt is amended to delete descriptive information concerning the length of domicile required for the debtor to qualify to claim certain exemptions. Any summary of the amendments to § 522 of the Code concerning these requirements enacted in 2005 might inadvertently cause the debtor to lose important rights. Accordingly, the form now simply directs the debtor to indicate whether exemptions are being claimed under § 522(b)(2) or § 522(b)(3).

Schedule D - Creditors Holding Secured Claims is amended to direct the debtor to report the total of secured claims in both the "Predominantly Nondischargeable" and the "All Liabilities" columns of the Summary and Schedules.

Schedule E - Creditors Holding Unsecured Priority Claims is amended to implement the changes in priority to which a claim may be entitled under 11 U.S. C. § 507 as amended by the 2005 Act and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. The form also is amended to direct the debtor to provide separate totals of certain debts "in categories which are predominantly nondischargeable," and to direct the debtor to report these totals appropriately on the Summary of Schedules.

Schedule F - Creditors Holding Unsecured Nonpriority Claims is amended to direct the debtor to identify and separately total the amounts of debts the separate or otherwise identified listing of certain debts "in categories which are predominantly nondischargeable," and to report these totals appropriately on the Summary of Schedules. The debtor is advised that designating a debt as being in a "predominantly nondischargeable" category does not determine the status of the debt and is not intended as an admission by the debtor concerning any particular scheduled debt, but rather is for statistical purposes only, to implement 28 U.S.C. § 159 which was enacted in 2005.

Schedule G - Executory Contracts and Unexpired Leases is amended by deleting the note to the debtor advising that parties listed on this schedule may not receive notice of the filing of the bankruptcy case unless they also are listed on one of the schedules of liabilities. The better practice is for all parties to transactions with the debtor to receive notice of the filing of the case, and an amendment Rule 1007 requiring the debtor to provide a mailing list that includes these parties is scheduled to take effect December 1, 2005.

Schedule H - Codebtors is amended to add specifics about community property jurisdictions in connection with the requirement to provide the name of any spouse of a debtor who resides or resided in a community property jurisdiction. This amendment also mirrors amendments made in 1997 to Official Form 7, the Statement of Financial Affairs and will assure

that these codebtors receive notice of the filing of the bankruptcy case. The form also is amended to extend from six years to eight years the time period for which this information is reported pursuant to the 2005 amendments to § 727(a)(8) of the Code.

Schedule I - Current Income of Individual Debtor(s) is amended to require the income of a nondebtor spouse to be reported in cases filed under chapters 7 and 11. Line numbers have been added to assist the debtor in calculating and reporting totals. A new subtotal line for income from sources other than as an employee and a new "total monthly income" line provide for this form to be used in conjunction with Schedule J to satisfy the requirements of § 521(a)(1)(B)(v), which was added to the Code in 2005. The form also has been revised to provide the statement concerning any anticipated increase [or decrease] in income required in § 521(a)(1)(B)(vi), which also was added to the Code in 2005.

Schedule J - Current Expenditures of Individual Debtor(s). A direction has been added to require the debtor to report any increase [or decrease] in expenses of more than ten percent anticipated to occur within the year following the filing of the document, as required by § 521(a)(1)(B)(vi), which was added to the Code in 2005. The form also is amended to provide, in conjunction with Schedule I, a statement of monthly net income, itemized to show how the amount is calculated, as required by § 522(a)(1)(B)(v), which was added to the Code in 2005. This section of the form also can be used to apply the "disposable income test" in cases under chapter 12 and those cases under chapters 11 and 13 where the debtor is not required to complete disposable income section of Official Forms 22B or 22C. The section in which debtors in cases under chapter 12 and chapter 13 state the amount and interval of anticipated plan payments has been separated from the "monthly net income" section.

Declaration Concerning Debtor's Schedules - The declaration by a non-attorney bankruptcy petition preparer is amended to include material mandated by § 110 of the Code as amended in 2005.

COMMITTEE NOTE

The form is amended in several ways to reflect changes in the Bankruptcy Code made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). A new sentence in the introduction advises the debtor not to disclose the name and address of any minor child.

The definition of “in business,” in the introductory section and amendments to Question 1. and Question 18. is amended to clarify that various part-time activities can result in the debtor being “in business” for purposes of the form.

Question 1. is amended to specify that, in addition to the income from the debtor’s primary employment, the debtor must include income from part-time activities either as an employee or from self-employment. The debtor now also will report the source of all income from employment or operation of a business, even if there is only one source, in order to assist the trustee in reviewing the pay stubs, etc., filed by the debtor in the case.

Question 3. is amended to accommodate amendments to § 547(c) of the Code enacted in 2005 which exempt from recovery by the trustee payments by a debtor for a domestic support obligation or as part of an alternative repayment schedule negotiated by an approved nonprofit budgeting and credit counseling agency. In addition, Question 3. now requires a debtor with primarily non-consumer debts to report only those transfers that aggregate more than \$5,000 to any creditor in the 90-day period prior to the filing of the petition, as a result of the addition of § 547(c)(9) to the Code in 2005.

In Question 10., the extension of the reachback period for transfers from one year to two years reflects the 2005 amendment to § 548(a)(1) of the Code to permit a trustee to avoid a fraudulent transfer made by the debtor within two years of the date of the filing of the petition. Question 10. also is amended to implement new § 548(e) added to the Code in 2005 to require the debtor to disclose all transfers to any self-settled asset protection trust within the ten years before the filing of the petition.

Question 15. is amended to extend from two years to three years the prepetition time period for which the the debtor must disclose the addresses of all premises occupied by the debtor. This information will assist the trustee, the United States trustee, and the court to ascertain whether any homestead exemption asserted by the debtor is properly claimed under § 522(v)(3)(A) as amended, and §§ 522(p) and (q) as added to the Code in 2005.

The form also is amended to extend from six years to eight years the period before the filing of the petition concerning which the debtor is required to disclose the name of the debtor's spouse or of any former spouse who resides or resided with the debtor in a community property state. In addition, the certification by a non-attorney bankruptcy petition preparer is renamed a "declaration" and is amended to include material mandated by 11 U.S.C. § 110 as amended by the 2005 Act.

COMMITTEE NOTE

The form is amended to conform to § 521(a)(6), which was added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), by deleting “property claimed as exempt” as an option open to the debtor with respect to personal property the debtor intends to retain. The form also is amended to add “lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)” to the choices a debtor may make. The certification by a non-attorney bankruptcy petition preparer in the form is renamed a “declaration” and is amended to include material mandated by the 2005 amendments to § 110 of the Code.

Form 8 Alternate Version

COMMITTEE NOTE

The form is amended to conform to § 521(a)(6), which was added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), by adding a section covering personal property subject to an unexpired lease and an option labeled “lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)” to the choices a debtor may make. The certification by a non-attorney bankruptcy petition preparer in the form is renamed a “declaration” and is amended to include material mandated by the 2005 amendments to § 110 of the Code.

COMMITTEE NOTE

The form is amended in a variety of ways to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). All versions of the form are amended to provide information about filing claims to creditors with foreign addresses and to advise those creditors to consult a lawyer familiar with United States bankruptcy law regarding any questions they may have about their rights in a particular case. These amendments implement § 1514, which was added to the Code in 2005.

Forms 9A and 9C are amended to include a box in which the clerk can notify creditors in a chapter 7 case filed by an individual with primarily consumer debts whether the presumption of abuse has arisen under § 707(b) of the Code as amended in 2005. Under § 342(d) of the Code, the clerk has a duty to notify creditors concerning the presumption within ten days of the filing of the petition. If cases in which the debtor does not file Official Form 22A with the petition, the forms provide for the clerk to state that insufficient information has been filed, and to inform creditors that if later-filed information indicates that the presumption arises, creditors will be sent another notice.

Forms 9A and 9C also are amended to include on the front of the form the deadline for filing a request to delay the debtor's discharge under § 727(a)(12) of the Code and schedule a hearing to determine whether the circumstances described in § 522(q) of the Code exist. Both sections were added to the Code in 2005.

In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code as amended in 2005 may not apply or may be limited in duration, unless the stay is extended or imposed by court order. All versions of the form are amended to alert creditors to consult an attorney concerning what rights the creditor may have in the specific case.

Section 1514, added to the Code in 2005, also requires that a secured creditor with a foreign address be advised whether the creditor is required to file a proof of claim, and Forms 9B, 9D, 9E, 9E (Alt.), 9F, 9F (Alt.), 9G, 9H, and 9I are amended to include a general information addressing that question. Forms 9E, 9E (Alt.), 9F, and 9F (Alt.) also are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors.

Forms 9E and 9E Alt. are amended to state that an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code in 2005, and Forms 9F and 9F (Alt.) are amended to add a deadline for filing a complaint to determine the dischargeability of a debt, in conformity with § 1141(d)(6), which was added to the Code in 2005.

COMMITTEE NOTE

The form is amended to conform to changes in the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005).

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges.

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the eight years prior to the filing of the petition in the case in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The explanation part of the form is amended to include additional types of debts that are not discharged under § 523(a) as amended in 2005 and to revise certain terminology in conformity with provisions of the 2005 Act.

COMMITTEE NOTE

The certification by a non-attorney bankruptcy petition preparer in this form is renamed a “declaration” and is amended to include material mandated by amendments to § 110 of the Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005).

COMMITTEE NOTE

This form is new. It contains the notice a non-attorney bankruptcy petition preparer is required to give to a debtor under § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). The notice states, in language mandated in the 2005 Act, that the bankruptcy petition preparer is not an attorney and must not give legal advice. The form includes examples of advice a bankruptcy petition preparer may not give that are taken from § 110(e)(2), which also was added to the Code in 2005. The notice must be signed by the debtor and by the bankruptcy petition preparer and filed with any document for filing prepared by the bankruptcy petition preparer.

COMMITTEE NOTE

A. Overview

One of the changes in bankruptcy practice introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 is a definition of "current monthly income," set out in § 101(10A) of the Code. Certain individual debtors in Chapter 7, all individual debtors in Chapter 11, and all Chapter 13 debtors are required to calculate their income under this definition. Certain Chapter 7 and 13 debtors are further required to calculate deductions from current monthly income allowed under the means test of § 707(b)(2)(A). Chapter 7 debtors subject to the means test may, as reflected in these calculations, be subject to a presumption of abuse. To comply with the reporting and calculation requirements involving current monthly income and the means test, three separate forms have been provided—one for Chapter 7, one for Chapter 11, and one for Chapter 13. This note first describes the "current monthly income" calculation that is common to all three of the forms, next describes the means test deductions employed in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the separate forms.

B. Calculation of current monthly income

Current monthly income ("CMI"), as defined in § 101(10A), has different purposes in each of the three chapters in which it is used, but basic computation is the same. CMI is a monthly average of defined "income" received in the six calendar months prior to the bankruptcy filing by the debtor and, in a joint case, the debtor's spouse. The "income" to be included in this average is (1) income from all sources, whether or not taxable, and (2) any amount paid by an entity other than the debtor (or the debtor's spouse in a joint case) on a regular basis for the household expenses of the debtor, the debtor's dependents, and (in a joint case) the debtor's spouse if not otherwise a dependent. However, the income to be averaged is defined as not including "benefits received under the Social Security Act" and certain payments received by victims of terrorism, war crimes, and crimes against humanity.

The forms address the calculation of CMI, in each chapter, by a series of line entries, divided into columns providing for separate entries by the debtor and the debtor's spouse. The calculation line entries are set out in Part II of the Chapter 7 form, and Part I of the forms for Chapter 11 and Chapter 13. These line entries for calculating CMI are introduced by a set of instructions and check boxes indicating when the "debtor's spouse" column is required to be completed. The instructions also direct the required averaging of the income reported on the line entries. The line entries set out all of the common forms of income and then include a "catch-all" line for other types of income. A line is included for regular contributions of support. Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may

be a dispute about whether unemployment compensation is a "benefit received under the Social Security Act." The forms take no position on the merits of this argument, but allow debtors to make the argument by excluding unemployment compensation from current monthly income and reporting it separately, so that the exclusion may be challenged. The forms provide instruction for proper totaling of the income lines.

C. Means test deductions from current monthly income

Deductions from CMI are set out in § 707(b)(2)(A)(ii)-(iv). In Chapter 7, these deductions result in a net number that may generate a presumption of abuse; in Chapter 13, these deductions may result in the amount of "disposable income" that a debtor may be required to pay to unsecured creditors under § 1325(b). The forms for Chapter 7 and Chapter 13 have identical sections (Parts V and III, respectively) for calculating the deductions of § 707(b)(2)(A)(ii)-(iv). The calculations are divided into subparts reflecting different kinds of deductions allowed.

1. Deductions under IRS standards

Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the web pages where the relevant IRS allowances can be found. As with all of the deductions in § 707(b)(2)(A)(ii), deductions under the IRS standards are subject to the proviso that they not include "any payments for debts."

The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain a single entry line for the applicable allowance.

The IRS Local Standards provide separate deductions for housing and utilities and for transportation, with different amounts for different areas of the country, depending on family size and number of vehicles owned or leased. Each of the amounts specified by the IRS in the Local Standards are treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii) provides for deduction in the "amounts specified under the . . . Local Standards," the forms treat these amounts as allowed deductions.

[If the IRS separates its housing allowance in time for the "IRS Extra" versions to be used: The Local Standards for housing and utilities separate this expense category into a utilities/maintenance component and a mortgage/rental expense component. The utilities/maintenance expense is a simple allowance. However, for homeowners with mortgages, the mortgage/rental expense involves debt payment. Accordingly, the form requires debtors to deduct from allowance for mortgage/rental expense the average monthly mortgage payment

(principal and interest), up to the full amount of the IRS mortgage/rental expense. This average payment is as reported on the separate line of the form for deductions of secured debt, pursuant to § 707(b)(2)(a)(iii).]

[If the IRS does not separate its housing allowance in time for the "IRS Extra" versions, so that the "Plain" versions must be used: The Local Standards for housing and utilities provide a single expense allowance covering both the cost of acquiring housing (rent or mortgage payments) and the cost of utilities, insurance and maintenance connected with the housing. Because this allowance includes debt payment, the form directs debtors not to include their mortgage payments to the extent covered by the IRS allowance. The proper manner of calculating this required adjustment of the housing and utilities allowance will have to be determined by judicial decisions.]

The Local Standards for transportation separate this expense category into a vehicle operation/public transportation component and a component for ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates [or "for which the debtor pays the operating expenses"], with debtors who do not operate vehicles being given a public transportation expense. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance. However, for debtors with debt secured by the vehicles that they operate, the ownership/lease expense does involve debt payment. Accordingly, the form requires debtors to deduct from allowance for ownership/lease expense the average monthly loan payment amount (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the form for deductions of secured debt, pursuant to § 707(b)(2)(a)(iii).

The IRS does not set out allowances for "Other Necessary Expenses." Rather, it sets out a number of categories for such expenses, and describes the nature of the expenses that may be deducted in each of these categories. Section 707(b)(2)(a)(ii) allows a deduction for the debtor's actual expenses in these specified categories, subject to its requirement that payment of debt not be included. Several of the IRS categories deal with debt repayment and so are not included in the forms. Several other categories deal with business expenses, and the forms combine these categories into a single line entry. The remaining IRS categories are each set out in individual line entries. Instructions on the individual entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

The forms call for a subtotal of the deductions allowed under the IRS standards.

2. Additional statutory expense deductions

In addition to the IRS expense deductions, subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii) allow six special expense deductions. Each of these additional expense items is set out on a separate line entry in Subpart B, introduced by an instruction that there should not be

double counting of any expense already included in the IRS deductions. Contributions to tax-exempt charities provide another statutory expense deduction. Section 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions (up to 15% of the debtor's gross income), and § 707(b)(1) provides that in considering whether a Chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor . . . continues to make [tax-exempt] charitable contributions." Accordingly, Subpart B also includes an entry line for charitable contributions. Again, the forms call for the additional statutory expense deductions to be subtotaled.

3. Deductions for payment of debt

Subpart C of the forms deals with deductions from CMI for payment of secured and priority debt, as well as a deduction for the administrative fees that would be incurred if the debtor made debt payments through a Chapter 13 plan. In accord with § 707(b)(2)(A)(iii), the deduction for secured debt is divided into two entry lines—one for payments that are contractually due during the 60 months following the bankruptcy filing, the other for amounts needed to retain necessary collateral for secured debts in default. In each situation, the instructions for the entry lines require dividing the total payment amount by 60, in accord with the statutory directive. Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line, also directing division by 60. The defined deduction for the expenses of administering a Chapter 13 plan, allowed by § 707(b)(2)(A)(ii)(III) for debtors eligible for Chapter 13, is treated in an entry line that requires the eligible debtor to state the amount of the debtor's prospective Chapter 13 plan payment and multiply that payment amount by the percentage fee established for the debtor's district by the Executive Office for United States Trustees. The forms refer debtors to a website that will set out this percentage fee. An entry line is provided for subtotaling the debt payment deductions.

4. Total deductions

Finally, the forms direct that the subtotals from Subparts A, B, and C be added together to arrive at the total of allowed deductions from CMI.

D. The Chapter-specific forms

1. Chapter 7

The Chapter 7 form has several unique aspects. The form includes, in the upper right corner of the first page, a check box requiring the debtor to state whether or not a presumption of abuse exists as a result of the information provided by the form. This check box is intended to give clerks of court a conspicuous indication of the cases for which they will be required to provide notice of a presumption of abuse pursuant to § 342(d).

Part I of the form implements the provision of § 707(b)(2)(D) that excludes certain disabled veterans from any form of means testing, making it unnecessary to compute the CMI of such veterans. Debtors who declare under penalty of perjury that they are disabled veterans within the statutory definition are directed to verify their declaration in Part VII, to check the "no presumption" box at the beginning of the form, and to disregard the remaining parts of the form.

Part II of the form is the computation of current monthly income ("CMI") as defined in § 101(10A). Section 707(b)(2) eliminates standing to assert the means test's presumption of abuse if the debtor's annualized CMI does not exceed a defined median state income. For this purpose, the CMI of the debtor's spouse is added to the debtor's CMI even if the debtor's spouse is not a joint debtor, unless the debtor declares under penalty of perjury that the spouses are legally separated or living separately other than for purposes of evading the means test. Accordingly, the calculation of CMI in Part II directs a computation of the CMI of the debtor's spouse in all cases of married debtors where the debtor is unable to make the specified declaration or where the debtors are filing jointly, and the CMI of both spouses in these cases is added for purposes of determining standing under § 707(b)(7).

Part III of the form provides for the comparison of the debtor's CMI for purposes of § 707(b)(7) to the applicable state median income. It then directs debtors whose income does not exceed the applicable median to verify the form, to check the "no presumption" box at the beginning of the form, but to disregard the remaining parts of the form. Debtors whose CMI does exceed the applicable state median are directed to complete the remaining parts of the form.

Part IV of the form provides for an adjustment of the CMI of a married debtor, not filing jointly, whose spouse's CMI was included with the debtor's for purposes of determining standing to assert the means test presumption. The means test itself does not charge a married debtor in a non-joint case with the income of the non-filing spouse, but rather only with contributions made by that spouse to the household expenses of the debtor and the debtor's dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI total of Part II to be reduced by the amount of the non-filing spouse's income that was not contributed to the household expenses of the debtor or the debtor's dependents.

Part V of the form provides for a calculation of allowed deductions from the debtor's CMI, as described above.

Part VI provides for a determination of whether the debtor's CMI, less the allowed deductions, gives rise to a presumption of abuse under § 707(b)(2)(A). Depending on the outcome of this determination, the debtor is directed to check the appropriate box at the beginning of the form and to sign the verification in Part VII.

2. Chapter 11

The Chapter 11 form is the simplest of the three, since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual Chapter 11 debtor's disposable income. Rather, § 1129(a)(15) requires payments of disposable income "as defined in section 1325(b)(2)," and that paragraph allows calculation of disposable income under judicially-determined standards, rather than pursuant to the means test deductions, specified for higher income Chapter 13 debtors by § 1325(b)(3). However, § 1325(b)(2) does require that CMI be used as the starting point in the judicial determination of disposable income, and so the Chapter 11 form requires this calculation (in Part I of the form), as described above, together with a verification (in Part II).

3. Chapter 13

Like the Chapter 7 form, the form for Chapter 13 debtors contains a number of special provisions. Because § 1325(b)(3) employs the means test deductions for debtors whose CMI exceeds the applicable state median income, the upper right corner of the first page includes check boxes requiring the debtor to state whether § 1325(b)(3) applies, thus quickly informing the standing trustees and interested parties of the need to consider these deductions.

Part I of the form is the calculation of CMI, as described above.

Part II of the form compares the debtor's CMI to the applicable state median, allowing the determination of the applicability of the means-test deductions required by § 1325(b)(3).

Part III provides for calculation of the means-test deductions provided in § 707(b)(2), as described above, and as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part IV provides for three adjustments required by special provisions affecting disposable income. First, § 1325(b)(2) itself excludes from CMI as used to determine disposable income certain "child support payments, foster care payments, [and] disability payments for a dependent child." Because such payments are otherwise included in the definition of CMI in § 101(10A), a line entry for deduction of these payments is provided. Second, a line entry is provided for deduction of contributions by the debtor to certain retirement plans, as listed in § 541(b)(7)(B), since that provision states that such contributions "shall not constitute disposable income, as defined in section 1325(b)." Third, the same line entry also allows a deduction from disposable income for payments on loans from retirement accounts that are excepted from the automatic stay by § 362(b)(19), since § 1322(f) provides that for a "loan described in section 362(b)(19) . . . any amounts required to repay such loan shall not constitute 'disposable income' under section 1325."

The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorney fees. There is no specific statutory allowance for such a

deduction, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.

Part V of the form is the verification.

COMMITTEE NOTE

The form is new. Section 727(a)(11), which was added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005), requires the debtor to complete an instructional course concerning personal financial management as a condition for receiving a discharge. The completed form, when filed by the debtor, will signal the clerk that this condition has been satisfied.

COMMITTEE NOTE

This form is new. [Rule 8001, as amended in 2005,][Interim Rule 8001(f)] requires that any certification of an appeal bankruptcy court judgment, order, or decree directly to the United States Court of Appeals by all the appellants and appellees (if any) acting jointly be filed on this form.

